IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.280 OF 2007
IN
COMPANY PETITION NO.460 OF 2005

Sharp Industries Ltd. ...Applicants/ Petitioners

Versus

The Recovery Officer & Ors. ...Respondents

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Mr.M.D.Patel for Applicants/Petitioners.

Mr.H.V.Mehta for Respondents.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 17, 2007.

P.C.

1. Heard Counsel for the parties.

2. Perused the pleadings and documents on record.

3. By this Application, the Company seeks direction against the Respondents on the ground that the Respondents have issued instructions which

are not consistent with the Scheme approved by this Hon’ble Court in terms of order dated 17th November 2005 in Company Petition No.460 of 2005. There is no doubt that this Court was called upon to approve Scheme of Arrangement which was eventually approved in terms of order dated November 17, 2005. The proposed arrangement was contested by the creditors and workers as can be discerned from the record in Company Petition, and in particular, the Judgment dated November 17, 2005. Insofar as the statutory creditors are concerned, the Scheme stipulates that the principal amount together with interest at the rate of 12% will be calculated from the effective date payable by the Company and shall be paid over by the Company within a period of 36 months from the effective date without any liability to pay the penalty or any interest in the nature of penalty.

4. It is the case of the Applicant Company that in terms of the sanctioned Scheme, the Company has already paid sum of Rs.5,00,000/- (Rupees Five Lakhs) to the Respondents, Employees State Insurance Corporation.

5. According to the Applicants, the Applicant Company owes further sum of only Rs.3,71,681/- (Rupees Three Lakhs Seventy-one Thousand Six Hundred Eighty-one) to discharge the obligation as per the sanctioned Scheme. However, the Respondent Corporation issued restraint order against the Respondent Bank in respect of the account of the Applicant Company operated with the Respondent Bank. As a result of that attachment order and direction given by the Corporation, the Respondent Bank paid sum of Rs.10,32,821/- (Rupees Ten Lakhs Thirty-two Thousand Eight Hundred Twenty-one) by pay order No.99248 to the State Bank of India Employees State Insurance Fund Accounts No.1. According to the Applicants, this payment is plainly inconsistent with the Scheme propounded and sanctioned by this Court and the action of the Corporation as well as the Respondent Bank will have to be set-aside and the Corporation directed to reimburse the stated amount of Rs.10,32,821/- (Rupees Ten Lakhs Thirty-two Thousand Eight Hundred Twenty-one) to be credited in the Company Account

operated with the Respondent Bank.

6. After having considered the rival submissions, I have no difficulty in accepting the claim of the Applicants. This is so because, as per the Scheme sanctioned by this Court, the Applicant Company has already paid sum of Rs.5,00,000/- (Rupees Five Lakhs) to the Respondent Corporation. The Applicant Company owes further sum of Rs.3,71,681/- (Rupees Three Lakhs Seventy-one Thousand Six Hundred Eighty-one) to be paid to the Corporation, as per the sanctioned Scheme. While the said sanctioned Scheme was in operation, the Corporation who is one of the secured creditor, could not have unilaterally directed payment of further amount which was outside the Scheme sanctioned by this Court.

7. Counsel for the Respondent Corporation, however, relying on the decision of the Full bench of the Calcutta High Court in the case of **Dalgaon Agro Industries Ltd. vs. Union of India reported in 2006 (108) FLR 545** would contend that although

the Scheme has been sanctioned by this Court, the same was not binding on the Respondent Corporation. Emphasis is placed on the exposition in Paragraph 9 and 9.1 of the said decision in particular. According to the Respondent Corporation, as the Respondent Corporation had neither voted at the meeting held for approval of the Scheme by the concerned Creditors nor participated in the proceedings before this Court at the stage of sanction of the Scheme, the decision of this Court or the sanctioned Scheme cannot come in the way of the Respondent Corporation to recover the statutory dues. This argument clearly overlooks that in the present case, workers/employees not only voted for the approval of the Scheme but also participated in the proceedings before this Court, which considered the question of sanction of the Scheme as propounded by the Company. All objections raised on behalf of the workers were considered and decision reached by this Court while sanctioning the Scheme on terms indicated in the Judgement dated 17th November 2005. Whereas, in the reported Judgment which is pressed into service, neither the Corporation nor the employees were party to the

Court proceedings which had sanctioned the Scheme. The exposition in the case of **Dalgaon Agro Industries Ltd. (supra)** will be of no avail to the Respondent Corporation. So long as the Respondent Corporation and in particular the Workers do not successfully challenge the sanctioned Scheme, they cannot be heard to contend that they will be free to ignore the Scheme though it is binding on the Respondent Corporation, being one of the statutory creditor, whose interest has been covered by the decision dated November 17, 2005 while sanctioning the Scheme.

8. As and when the Respondent Corporation challenges the validity of the said Scheme on the grounds available to it and on succeeding in that challenge, the Respondent Corporation may be free to pursue such remedy against the Applicant Company as may be permissible in law.

9. For the time being, the Respondent Corporation will be bound by the Scheme sanctioned by this Court - though did not appear before the Court when the matter for consideration of sanction

of Scheme was heard.

10. In the circumstances, this Application succeeds and is made absolute in terms of prayer clauses (a), (b) and (c), which read thus:

> "a. That this Hon'ble Court be pleased to quash and set aside the prohibitory order dated 2nd March 2007, (at Exhibit "M" to the Affidavit in Support hereof), issued by the 1st Respondent.
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> b. That this Hon'ble Court be pl;eased to pass an order and injunction restraining the 1st and 2nd Respondents from taking any steps or action for recovery of, or in any manner recovering or receiving any amounts from the Applicant (either directly or through its bankers, servants, agents or otherwise) towards any dues of the 2nd Respondent for the period prior to the effective date of the said Scheme (at Exhibit "A" to the Affidavit in Support hereof), except in the manner and to the extent as provided by the said Scheme as sanctioned by this Hon'ble Court by its order dated 17th November 2005, i.e., as per the statement at Exhibit "E" to the Affidavit in Support hereof.
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> c. That this Hon'ble Court be pleased to order and direct the 1st and 2nd Respondents forthwith to refund to the Applicant any amounts in excess of Rs.3,71,681/- received by the 1st and 2nd Respondents from the Applicant's bank account with the 3rd Respondent, along with interest thereon @ 18% p.a. from the date of receipt thereof by the 1st and/or 2nd Respondent till refund to the Applicant."

11. It is made clear that the Corporation will be free to take recourse to such legal remedy as may be permissible by law, which will be considered on its own merits.

12. At this stage, Counsel for the Respondent Corporation seeks eight weeks time for refund of the requisite amount, which is required to be paid in terms of this order. That request is accepted.

A.M.KHANWILKAR, J.